

## **TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD**

### **LSA Document #00-135**

#### **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On March 20, 2001, the Underground Storage Tank Financial Assurance Board conducted the first public hearing/board meeting concerning the development of amendments to 328 IAC 1 and 328 IAC 2. Comments were made by the following parties:

C. Michael Pitts, Executive Director, Indiana Petroleum Marketers and Convenience Store Association (IPCA).

Following is a summary of the comment received and IDEM's responses thereto.

*Comment:* We, as an organization, are very supportive overall of the general thrust of this rule making. I do want to thank the IDEM staff for a lot of hard work on this. It really has been a great example of a collaborative effort as we've worked on both statutory changes as well as rule changes. The cost work group is going to continue to meet, as I understand it. I just saw the comments on the draft rule today for the first time, so I really haven't had a chance to digest them fully. But just at a glance, there's several things for discussion. These include tank fee receipts and whether owners should still have to go back to 1988 to produce documentation. It's something we've talked about, but based on the comment, I'm not sure we've fully resolved yet. The attorneys fees comments, the definition of litigation is some thing that I believe still needs to be looked at.

Also, RISC, we've been talking about the RISC program as something out there in the future, and lo and behold it actually began in February after several years of development. But I think we are still a little uncomfortable with the way the rule reads in terms of reimbursement for RISC costs. I think our understanding was that some of the expenses that an owner might go through to determine whether they clean up according to RISC or they clean up under the existing standards would be something that's reimbursable, and I'm not sure that's the way the rule reads now.

In any event, I would urge that the work group, the broader work group, not just the cost work group, but the broader group, get back together fairly soon and evaluate some of these comments that we have and see where we're at on everything. As has been referenced, there's several important things in the statute such as the change to the CAPs that will also need to be reflected in these rules ultimately. I think we're on a good path. (IPCA)

*Response:* Concerning tank fee receipts and how far back an owner or operator would have to retain records, IDEM maintains that under IC 13-23-12-5, the owner or operator must retain all fee receipts and produce them for inspection upon request.

Regarding the recovery of attorney fees outside of litigation under 328 IAC 1-3-5(a)(7), IDEM staff has agreed to re-examine that issue.

Regarding concerns with implementing the RISC program and RISC costs incurred and subsequently reimbursed, the agency has developed a nonrule policy document on the RISC

program which addresses these issues.

In response to the issue of legislative changes reflected within this rule, IDEM will amend the rule to conform to ELTF legislation passed in this session. Therefore, the final adoption hearing will be scheduled after the regular 2001 legislative session.